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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 DONALD BOOKER,

12 Plaintiff,

13 v.

14 D. LEE, et al.,

15 Defendants.  
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Case No. 2:22-cv-07258-SPG-JC

**MEMORANDUM OPINION AND  
ORDER DISMISSING ACTION**

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19 On October 4, 2022, Plaintiff Donald Booker, who is in custody, is proceeding *pro*  
20 *se*, and has been granted leave to proceed without prepayment of the filing fee, filed a Civil  
21 Rights Complaint (“Complaint”) pursuant to 42 U.S.C. § 1983 against four Defendants  
22 employed at California State Prison, Los Angeles County in Lancaster, California. (ECF  
23 Nos. 1, 9). On June 12, 2023, Defendants filed a Motion to Dismiss the Complaint  
24 (“Motion”) which Plaintiff did not oppose. (ECF No. 27). On October 2, 2023, the  
25 Magistrate issued a Report and Recommendation detailing deficiencies in the Complaint  
26 and recommending that the Court grant the Motion. (ECF Nos. 29-30). Plaintiff did not  
27 file any objections to the Report and Recommendation.  
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1 On March 26, 2024, this Court issued an Order (“March Order”) adopting the facts  
2 and procedural history set out in the Report and Recommendation, its analysis, findings,  
3 and conclusions relative to the deficiencies in the Complaint, and its recommendation to  
4 grant the Motion. (ECF No. 48). The Court accordingly, granted the Motion, dismissed  
5 the Complaint with leave to amend, and directed Plaintiff within twenty-one days (i.e., by  
6 April 16, 2024) to file a First Amended Complaint, a Notice of Dismissal, or a Notice of  
7 Intent to Stand on Complaint. (ECF No. 48). The March Order further cautioned Plaintiff  
8 that the failure to timely file a First Amended Complaint, a Notice of Dismissal, or Notice  
9 of Intent to Stand on Complaint may be deemed Plaintiff’s admission that amendment is  
10 futile and may result in the dismissal of this action with or without prejudice based on,  
11 among other things, Plaintiff’s failure to diligently prosecute and/or failure to comply with  
12 the March Order. (ECF No. 48). Notwithstanding the expiration of the foregoing deadline,  
13 Plaintiff has not complied with the March Order or filed anything in this action since the  
14 issuance of the March Order.

15 It is well-established that a district court may *sua sponte* dismiss an action where the  
16 plaintiff has failed to comply with a court order and/or unreasonably failed to prosecute.  
17 *See Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-33 (1962); *Ferdik v. Bonzelet*, 963  
18 F.2d 1258, 1260 (9th Cir.) (as amended), *cert. denied*, 506 U.S. 915 (1992); *see also*  
19 *McKeever v. Block*, 932 F.2d 795, 797 (9th Cir. 1991) (district court may *sua sponte*  
20 dismiss action “only for an unreasonable failure to prosecute”) (citations omitted).

21 In determining whether to dismiss an action for failure to prosecute or failure to  
22 comply with court orders, a district court must consider several factors, namely (1) the  
23 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its  
24 docket; (3) the risk of prejudice to defendants; (4) the public policy favoring disposition of  
25 cases on their merits; and (5) the availability of less drastic alternatives. *See In re Eisen*,  
26 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to prosecute); *Ferdik*, 963 F.2d at 1260-61  
27 (failure to comply with court orders). Dismissal is appropriate under the foregoing analysis  
28 “where at least four factors support dismissal . . . or where at least three factors ‘strongly’

1 support dismissal.” *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)  
2 (citations omitted). Where a plaintiff is proceeding *pro se*, however, the court must first  
3 notify the plaintiff of the deficiencies in the complaint so that the plaintiff has an  
4 opportunity “to amend effectively.” *Ferdik*, 963 F.2d at 1261 (citation omitted).

5 Here, dismissal is appropriate based on Plaintiff’s failure to comply with the March  
6 Order and the failure to prosecute. The Court has considered the five factors discussed  
7 above—the public’s interest in expeditious resolution of litigation, the court’s need to  
8 manage its docket, the risk of prejudice to the Defendants, the public policy favoring  
9 disposition of cases on their merits, and the availability of less drastic alternatives. The  
10 first two factors—the public’s interest in expeditiously resolving this litigation and the  
11 Court’s interest in managing the docket—strongly weigh in favor of dismissal. As noted  
12 above, Plaintiff has been notified of the deficiencies in the Complaint and has been given  
13 the opportunity to amend it, to dismiss it, or to notify the Court that he wishes to stand  
14 thereon. He has done nothing. *See Edwards*, 356 F.3d at 1065. The third factor, risk of  
15 prejudice to the Defendant, also weighs strongly in favor of dismissal. *See Anderson v. Air*  
16 *West, Inc.*, 542 F.2d 522, 524 (9th Cir. 1976) (prejudice to defendants presumed from  
17 unreasonable delay) (citation omitted). The fourth factor, the public policy favoring  
18 disposition of cases on their merits, is greatly outweighed by the factors in favor of  
19 dismissal discussed herein. As for the fifth factor, because Plaintiff has already been  
20 cautioned of the consequences of his failure to prosecute and his failure to comply with the  
21 March Order, and has been afforded the opportunity to avoid such consequences but has  
22 not responded, no sanction lesser than dismissal is feasible. *See, e.g., Yourish v. California*  
23 *Amplifier*, 191 F.3d 983, 989-90 (9th Cir. 1999) (dismissal of action with prejudice not  
24 excessive sanction for plaintiffs’ failure timely to comply with court’s order to submit an  
25 amended complaint).

1 IT IS THEREFORE ORDERED that this action is dismissed based upon Plaintiff's  
2 unreasonable failure to prosecute and his failure to comply with the March Order.  
3 Judgment shall be entered accordingly.

4 IT IS SO ORDERED.

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6 DATED: August 20, 2024



7 HON. SHERILYN PEACE GARNETT  
8 UNITED STATES DISTRICT JUDGE  
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